

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**ISLETA RESORT & CASINO, AN ENTERPRISE
OF THE PUEBLO OF ISLETA**

and

Case 28-CA-140945

SHAWNA PEREA, an Individual

**GENERAL COUNSEL’S OPPOSITION TO RESPONDENT’S
MOTION TO POSTPONE HEARING**

Counsel for the General Counsel (General Counsel) opposes Respondent’s Motion to Postpone Hearing (Motion), for the above-referenced matter. In arguing to postpone the administrative hearing from May 5, 2015¹, to an unspecified date, Respondent argues that its pending Motion to Dismiss before the Board filed on March 27, in addition to its Petition to Revoke Subpoenas filed on April 27, should be ruled on before moving forward with the scheduled hearing. Respondent requests that the hearing be postponed until “all administrative and judicial appeals of those decisions have been exhausted.” Motion, Page 3.

Respondent’s requests are unreasonable and unsupported. Respondent’s arguments have no merit, and Respondent’s efforts to avoid the commencement of this hearing should be rejected. Indeed, any further delay in commencing the hearing, which involves Respondent’s unlawful termination of an employee for engaging in protected concerted activities, would be contrary to the purposes of the Act. Respondent, by its Motion, would prolong the economic hardship it caused the Charging Party Shawna Perea (Perea), which would indefinitely delay the resolution regarding her termination. Further, if

¹ All dates cited herein are in 2015, unless otherwise noted.

Respondent's Motion is granted and the Board eventually ruled against Respondent's Motion to Dismiss, Ms. Perea's injustice would be prolonged even further until an administrative hearing was held. Similar arguments to delay administrative hearings based on pending cases have been rejected in other situations. See, e.g., *Belgrove Post Acute Care Center*, 359 NLRB No. 77, slip op. at 1, n. 1 (2013) (rejecting arguments while *Noel Canning* was pending before the Supreme Court. "This question remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act.") Accordingly, the General Counsel respectfully requests the Administrative Law Judge deny Respondent's Motion.

I. PROCEDURAL BACKGROUND

On November 14, 2014, a charge was filed in Case 28-CA-140945, by Shawna Perea (Perea), an Individual, against Isleta Resort & Casino, the Employer (Respondent). On January 30, a Complaint and Notice of Hearing (the Complaint) issued setting the matter for hearing on May 5. On February 12, Respondent filed its Answer to the Complaint. On March 27, Respondent filed a Motion to Dismiss that is currently pending before the Board. On April 27, Respondent filed their Motion to Postpone Hearing and Petition to Revoke Subpoenas. On April 28, the Administrative Law Judge issued an order to show cause as to why Respondent's Motion to Postpone Hearing should not be granted.

II. RESPONDENT'S MOTION TO POSTPONE HEARING IS UNREASONABLE, UNSUPPORTED, AND LACKS MERIT

The indefinite postponement of the hearing sought by Respondent is irrational and unwarranted. Respondent contends in its Motion that its previous Motion to Dismiss filed on March 27, currently before the Board, should be decided before moving forward with the scheduled hearing. However, nowhere in the Board's Rules and Regulations, or any other guidelines for that matter, is this set forth as a prerequisite for a hearing to continue as

scheduled. As Respondent states in the Motion to Postpone Hearing, “the Board may issue its decision at any time” in regards to the Motion to Dismiss. Motion, Page 2.

Nevertheless, Respondent still requests that the pending Motion to Dismiss be decided prior to moving forward with the scheduled hearing. This request is extremely unreasonable as it demands the Board take action when it is not required to do so. As stated throughout the Board’s Rules and Regulations, the Board is never required to rule on a party’s motion to dismiss before a hearing date, but “may” deny the motion, issue a notice to show cause, or “treat the motion as conceded, and default judgment, summary judgment, or dismissal, if appropriate, shall be entered.” NLRB Rules and Regulations, Section 102.24(b).

Respondent cannot rely on any authority when asking the Board to respond to the previously issued Motion to Dismiss before moving forward with the scheduled hearing.

Additionally, Respondent cannot request the hearing be postponed indefinitely until a final decision is rendered on the Petition to Revoke Subpoenas filed on April 27. Nowhere in the Board’s Rules and Regulations, Casehandling Manuals, or any other guidelines, is this a prerequisite for a scheduled hearing to proceed. Though the General Counsel is aware of Respondent’s arguments that it is not subject to the jurisdiction of the National Labor Relations Board and that tribal sovereign immunity allegedly protects Respondent from replying to the subpoenas, its request that the hearing date be postponed until a final decision is rendered on the Petition to Revoke Subpoenas is unjustifiable. In fact, pursuant to the Division of Judges Bench Book, “a party may be required to argue orally against a subpoena” and this would normally take place at the beginning of a hearing and be made part of the administrative record. Division of Judges Bench Book, Section 8-210.

Respondent is correct in stating these motions are significant in deciding if Respondent is subject to the Board's jurisdiction, but it cannot make demands, such as an indefinite postponement of the scheduled hearing, that are unfounded and unsupported by Board precedent. Respondent fully understood the possibility that the Board may not decide the Motion to Dismiss before the hearing date, and thus, absent such decision by the Board, having the hearing open as planned on May 5. To date, jurisdiction is the biggest issue contested between the parties, and the fact that the Board has yet to decide on Respondent's Motion to Dismiss should not preclude the General Counsel from presenting its case-in-chief at hearing.

Respondent's claim that it is not subject to the Board's jurisdiction is a bare claim, unsupported by an administrative record. It would be appropriate to proceed with the scheduled hearing and develop a record that may or may not support Respondent's claim that it is not subject to the Board's jurisdiction as well as a record that may or may not support the General Counsel's claim that Respondent discharged Ms. Perea in violation of the Act. With such an administrative record, the Board and any reviewing court may fully consider Respondent's claim that it is not subject to the Board's jurisdiction.

The seriousness of the unfair labor practice allegation in this matter requires expeditious adjudication due to the nature of Respondent's alleged unlawful behavior. Respondent unlawfully terminated the Charging Party, Ms. Perea, for engaging in protected concerted activities, and Respondent cannot hide behind alleged tribal sovereign immunity to indefinitely postpone this scheduled hearing. One of the reasons to hold a hearing is to adjudicate those issues in dispute, and seeing as jurisdiction is still a highly contested issue between the parties, the hearing should open as scheduled in order to allow the parties to

litigate jurisdiction, among other matters. Absent a prompt remedy, the discharged discriminatee will continue to suffer the economic effects of Respondent's unlawful conduct.

Finally, Respondent could have exercised its judicial remedies in regards to jurisdiction at any time, but chose instead to file the Motion to Dismiss with the Board. That Respondent's Motion to Dismiss has yet to be decided is of no consequence to the hearing date, as Respondent knew, or should have known, that this was a possibility. The fact that there has been no decision regarding Respondent's Motion to Dismiss should not preclude the General Counsel from presenting its case-in-chief at the scheduled hearing, in which it will put forth testimony and evidence showing the Board's jurisdiction in this matter, and proving that Respondent terminated Ms. Perea for engaging in protected concerted activities in violation of Section 8(a)(1) of the Act.

III. CONCLUSION

Based on the foregoing, the General Counsel respectfully requests the Administrative Law Judge deny Respondent's Motion to Postpone Hearing.

Dated at Albuquerque, New Mexico, this 30th day of April 2015.

/s/ Carlos Torrejon
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the **GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO POSTPONE HEARING** in **ISLETA RESORT & CASINO, AN ENTERPRISE OF THE PUEBLO OF ISLETA**, Case 28-CA-140945 was served by E-Gov, E-Filing, E-Mail and/or US mail on this 30th day of April 2015, on the following:

Via E-Gov, E-Filing:

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